

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 03-3332

United States of America,

Appellee,

v.

Ramon Garcia-Pena, also known as
Loreto Sarabia Garcia,

Appellant.

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Appeal from the United States
District Court for the
District of Nebraska.

[UNPUBLISHED]

Submitted: July 2, 2004
Filed: July 28, 2004

Before MELLOY, HANSEN, and COLLOTON, Circuit Judges.

PER CURIAM.

Ramon Garcia-Pena (Garcia) pleaded guilty to conspiring to distribute and to possess with intent to distribute 500 grams or more of a mixture or substance containing methamphetamine, in violation of 21 U.S.C. § 841(a)(1) and (b)(1), and also pleaded guilty to forfeiture of certain property. The district court¹ granted the government's motion to depart downward from the Guidelines for Garcia's

¹The Honorable Laurie Smith Camp, United States District Judge for the District of Nebraska.

substantial assistance, and sentenced Garcia to 238 months imprisonment and 5 years supervised release.

On appeal, Garcia's counsel has filed a brief and moved to withdraw under Anders v. California, 386 U.S. 738 (1967). For reversal, counsel suggests that the court abused its discretion in imposing an excessive sentence. This argument fails. At sentencing, Garcia withdrew his objections to the probation officer's recommended sentencing enhancements, see United States v. Tulk, 171 F.3d 596, 600 (8th Cir. 1999), and the extent of the court's downward departure is not reviewable, see United States v. Dutcher, 8 F.3d 11, 12 (8th Cir. 1993). Upon careful review of the record, we conclude there are no nonfrivolous issues for appeal. See Penson v. Ohio, 488 U.S. 75 (1988).

Accordingly, we affirm. We also grant counsel's motion to withdraw.
